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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 OBESITY RESEARCH INSTITUTE,
13 LLC,

14 Plaintiff,

15 v.

16 FIBER RESEARCH
17 INTERNATIONAL, LLC, *et al.*,

18 Defendants.

19
20 AND RELATED COUNTERCLAIM.
21

Case No. 15-cv-595-BAS(MDD)

**ORDER RE: FIBER RESEARCH
INTERNATIONAL, LLC AND
SHIMIZU CHEMICAL CORP.’S
JOINT MOTION TO FILE
DOCUMENTS UNDER SEAL**

[ECF No. 333]

22 Presently before the Court is Defendants Fiber Research International, LLC
23 (“FRI”) and Shimizu Chemical Corp.’s (“Shimizu”) renewed motion to file certain
24 documents under seal.¹ FRI states that they met and conferred with Plaintiff Obesity
25 Research Institute, LLC (“ORI”) and devised a plan to renew their requests for leave
26 to file documents under seal, which includes “each party . . . re-apply[ing] to file
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28 ¹ Now that Shimizu has been dismissed from this action, the Court will refer to Defendants collectively also as “FRI” for the purposes of this order.

1 under seal documents relating to their own confidentiality designations, regardless of
2 which party initially applied to seal the documents, since each party is in the best
3 position to know why their respective information should be maintained as
4 confidential.” (Persinger Decl. ¶ 5.)

5 The Court will refer to each motion by its Electronic Case Filing number
6 (“ECF No.”) on the docket for the purposes of this order as it previously did in the
7 March 17, 2017 Order, a format which FRI has also adopted in its renewed motion.
8 Both parties also did not re-submit the documents they seek to file under seal in both
9 redacted and unredacted form, a requirement for this district’s sealing procedure in
10 civil cases. This failure frequently made it difficult for the Court to determine
11 precisely what the parties sought to be sealed, particularly when the parties sought to
12 adjust redactions to existing documents.

13 14 **I. LEGAL STANDARD**

15 “[T]he courts of this country recognize a general right to inspect and copy
16 public records and documents, including judicial records and documents.” *Nixon v.*
17 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record
18 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the
19 starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
20 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
21 2003)). “The presumption of access is ‘based on the need for federal courts, although
22 independent—indeed, particularly because they are independent—to have a measure
23 of accountability and for the public to have confidence in the administration of
24 justice.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.
25 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

26 A party seeking to seal a judicial record bears the burden of overcoming the
27 strong presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet
28 this burden depends upon whether the documents to be sealed relate to a motion that

1 is “more than tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809
2 F.3d at 1102. When the underlying motion is more than tangentially related to the
3 merits, the “compelling reasons” standard applies. *Id.* at 1096–98. When the
4 underlying motion does not surpass the tangential relevance threshold, the “good
5 cause” standard applies. *Id.*

6 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest
7 in disclosure and justify sealing court records exists when such ‘court files might
8 have become a vehicle for improper purposes,’ such as the use of records to gratify
9 private spite, promote public scandal, circulate libelous statements, or release trade
10 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However,
11 “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,
12 incrimination, or exposure to further litigation will not, without more, compel the
13 court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). The decision to seal
14 documents is “one best left to the sound discretion of the trial court” upon
15 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*,
16 435 U.S. at 599.

17 Federal Rule of Civil Procedure 26(c), generally, provides the “good cause”
18 standard for the purposes of sealing documents. *See Kamakana*, 447 F.3d at 1179.
19 The test applied is whether “‘good cause’ exists to protect th[e] information from
20 being disclosed to the public by balancing the needs for discovery against the need
21 for confidentiality.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)
22 (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213
23 (9th Cir. 2002)). Under Rule 26(c), only “a *particularized showing* of ‘good cause’ .
24 . . is sufficient to preserve the secrecy of sealed discovery documents[.]” *In re*
25 *Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th
26 Cir. 2012) (emphasis added); *see also Kamakana*, 447 F.3d at 1180 (requiring a
27 “particularized showing” of good cause). “Broad allegations of harm, unsubstantiated
28 by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.”

1 *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Moreover,
2 a blanket protective order is not itself sufficient to show “good cause” for sealing
3 particular documents. *See Foltz*, 331 F.3d at 1133; *Beckman Indus.*, 966 F.2d at 476;
4 *San Jose Mercury News, Inc. v. U.S. District Court, N. Dist.*, 187 F.3d 1096, 1103
5 (9th Cir. 1999).

6 7 **II. ANALYSIS**

8 **A. ECF No. 216**

9 In its renewed motion with respect to ECF No. 216, FRI request leave to file
10 under seal Exhibits 3, 4, 9, 10, and 11 in addition to portions of the memorandum in
11 support of ORI’s motion to exclude Dr. Fahey. As FRI describes, these exhibits and
12 portions of the memorandum generally appear to present or discuss proprietary
13 testing methods. Though the entirety of Exhibits 9 and 11 warrant sealing, FRI fails
14 to present compelling reasons that the entirety of both deposition transcripts and
15 portions of the memorandum warrant the same treatment because the scope of the
16 request is too broad. *See Kamakana*, 447 F.3d at 1179.

17 Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** FRI’s
18 motion for leave to file under seal the documents related to ECF No. 216.
19 Specifically, FRI is only given leave to file Exhibits 9 and 11 under seal. FRI is may
20 file a revised motion for leave to file the remaining exhibits and memorandum under
21 seal, but the revised motion must specify portions that present compelling reasons
22 for sealing.

23 24 **B. ECF No. 221**

25 Similar to the reasons justifying sealing Exhibits 9 and 11 in ECF No. 216—
26 namely, that portions sought to be sealed contain proprietary information or other
27 information that warrants sealing—FRI sufficiently provides compelling reasons to
28 file under seal specific portions of ORI’s opposition to FRI’s motion to exclude the

1 report and testimony of Dr. Laura Lerner. Thus, the Court **GRANTS** FRI's motion
2 for leave to file under seal portions of ORI's opposition brief. (ECF No. 221.) If it is
3 not already available on the public docket, FRI must also file the opposition brief
4 with the appropriate redactions on the public docket.

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6 **C. ECF No. 223**

7 For the same reasons the Court granted FRI leave to file under seal portions of
8 the opposition brief related to ECF No. 221, the Court also **GRANTS** FRI leave to
9 file portions of ORI's opposition to FRI's motion to exclude ORI's non-retained
10 experts related. (ECF No. 223.) If it is not already available on the public docket, FRI
11 must also file ORI's opposition brief with the appropriate redactions on the public
12 docket.

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14 **D. ECF No. 236**

15 For the same reasons the Court rejected leave to file under seal the entirety of
16 two deposition transcripts with respect to ECF No. 216, the Court finds that FRI fails
17 to present compelling reasons to seal the entirety of Exhibits 4 and 5. That said, FRI
18 presents compelling reasons to seal certain portions of ORI's opposition to Shimizu's
19 motion to dismiss that discusses proprietary information.

20 Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** FRI's
21 request. (ECF No. 236.) Specifically, FRI is only given leave to file under seal
22 portions of ORI's opposition brief. If it is not already available on the public docket,
23 FRI must also file the opposition brief with the appropriate redactions on the public
24 docket.

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1 **E. ECF No. 250**

2 For the same reasons the Court granted FRI leave to file under seal portions of
3 the opposition brief related to ECF No. 221, the Court also **GRANTS** FRI leave to
4 file portions of ORI's reply to FRI's motion to exclude Dr. Fahey. (ECF No. 250.) If
5 it is not already available on the public docket, FRI must also file the reply brief with
6 the appropriate redactions on the public docket.

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8 **F. ECF No. 303**

9 For the same reasons the Court granted FRI leave to file under seal portions of
10 the opposition brief related to ECF No. 221, the Court also **GRANTS** FRI leave to
11 file portions of ORI's surreply in opposition to Shimizu's motion to dismiss. (ECF
12 No. 303.) If it is not already available on the public docket, FRI must also file ORI's
13 surreply brief with the appropriate redactions on the public docket.

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15 **G. ECF No. 318**

16 For the same reasons the Court granted FRI leave to file under seal portions of
17 the opposition brief related to ECF No. 221, the Court also **GRANTS** FRI leave to
18 file portions of ORI's reply in support of its objection to the magistrate judge's order
19 regarding the motion to compel reproduction of documents (ECF No. 320). If it is
20 not already available on the public docket, FRI must also file ORI's reply brief with
21 the appropriate redactions on the public docket.

22
23 **III. CONCLUSION & ORDER**


24 In light of the foregoing, the Court **GRANTS IN PART** and **DENIES IN**
25 **PART** ORI's motion for leave to file documents under seal in ECF Nos. 216 and
26 236, and **GRANTS** the motion in its entirety for ECF Nos. 221, 223, 250, 303, and
27 318.

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1 Where portions of briefs, exhibits, or other documents have been sealed, and
2 if not already available on the public docket, FRI must also file these documents with
3 the appropriate redactions on the public docket. More broadly, any documents where
4 leave has not been granted to file under seal, such as documents where FRI has
5 conceded sealing is not warranted, must also be filed on the public docket.

6 **IT IS SO ORDERED.**

7
8 **DATED: July 24, 2017**


Hon. Cynthia Bashant
United States District Judge